

Approved 11/7/07

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
October 3, 2007**

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford

Absent: None

1.Call to Order: Chairman Remian called the meeting to order at 6:03 P.M. and took a roll call.

2. Approve the Minutes of the 9/9/07 meeting: Mr. Ellis asked for a one-word correction on Page 4.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, to approve the minutes of the 9/9/07 meeting as corrected.
Carried 5-0-0

3. Correspondence: The chairman noted the following correspondence: 1) Mr. Cobey's emails to and responses from the DEP, 2) a letter from Mr. Tower responding to Mr. Katsiaticas' letters concerning the Robbins Mountain Subdivision, and 3) recent changes to the significant wildlife habitat. Mr. Cobey asked that his emails be included as part of the record.

4. James Dexter and Dale Mammina, Application for Land Use Permit for New Home Construction on Hornbarn Cove, Map 6, Lot 22-9, Limited Res., RP Zone: Mr. Cobey stated that this lot fell within two land use districts, namely Limited Residential and Commercial Fisheries/Marine Activities. He read from Section 16(B) of the Shoreland Zone Ordinance [SZO] as follows: "On lots listed as having more than one land use district, location of the boundary between them is considered a zoning map amendment subject to town vote, which shall precede Planning Board review of any application on the lot." Mr. Cobey said this was the situation of a string of lots in the Hornbarn Hill Subdivision. Mr. Ellis stated that there had been insufficient time to remove the dual designations prior to the town vote on the revised SZO. A new town vote would be required to change all the lots in question to Limited Residential only. Mr. Muddle asked if this could be remedied by an Appeals Board variance. Chairman Remian said the Board could not grant a use prohibited by the SZO. Mr. Cobey explained that the line between the two uses must be designated, but it was simpler to reduce the use to one zone, which must be established by a zoning amendment. He acknowledged that this fact was an incredible obstacle. James Tower asked if conditional approval could be granted but Mr. Cobey repeated that the SZO required a town vote before any PB review. CEO Bickford apologized to the applicants for failing to recognize the dual use problem. Mr. Ellis asked Mr. Tower if he would like to change all of the lots in question back to Limited Residential. The developer said he would and the chairman asked him to provide a letter stating that.

Mr. Cobey asked if the town had started charging fees for applications. Mr. Remian said the policy had been established by the Selectmen but had not been implemented because there was no supporting regulation. Mr. Cobey commented that a complete application also required a valid septic system permit or application for one. CEO Bickford responded that he, as Plumbing Inspector, had a septic application for this property. He said he had met with Mr. Dexter on site and confirmed that the septic system was properly placed.

Mr. Ellis suggested the Board inform the applicants of any deficiencies in their application, in order to avoid further delays. He said the plan should show: 1) location of filling over 10 cubic yards, 2) location of the clearing for approved construction, 3) location of the garage and second driveway and 4) location of the leach field. James Dexter provided an additional drawing and said he had not located those items precisely because he wanted PB input before doing so. Mrs. Kalloch ascertained that the cabin on the property would be 24' X 24'. Mr. Cobey said he would make his comments on this application available to the CEO because to discuss them here constituted review. Mr. Ellis suggested the applicants refer to the SZO use chart, wherein RP and Limited Residential zones were subject to different requirements. Mr. Cobey noted that it was required that development fit with the topography, making grading into the 75' setback near the cabin a problem. He also asked the applicants to keep in mind that the drainage plan required maintaining wooded areas for filtration, that clearing was limited to what was necessary and that the impact of utilities should be minimized. He said that if the definition of 20% slope were

based on the topography of the site, someone would need to explain how it was determined. Finally, Mr. Cobey noted that an erosion sediment control plan was required.

Mr. Dexter asked what he could have approved this evening. The CEO said the septic could be approved. In response to a question from the applicant, Mr. Remian assured Mr. Dexter that he would not need to appear for the line delineation proceedings and could probably skip the application review if the CEO determined all necessary information was included. Mr. Ellis commented that the applicant would need to show compliance with the criteria.

The Board agreed to take no action on this application. The chairman and CEO apologized to the applicants for their oversight of the dual use situation. Mr. Bickford said the Board should look at a lot more than the lots listed on Page 5 of the SZO. Mr. Cobey said the Board should inform residents of this problem. Mr. Bickford said he thought there would be no problem with the DEP if a town vote were taken. Mr. Ellis predicted it might take 2-1/2 months to get this resolved.

5. Nellie Taft, Represented by Bruce Habel, Application for Land Use Permit for Building Expansion, Map 7, Lot 79A, Limited Res. Zone: Mr. Ellis said he needed information on setback and Shoreland Zone [SZ] lines in order to determine if the house was in the setback, was non-conforming or had been enlarged in the past. Mrs. Kalloch asked whether the entire septic system would be replaced or only the tank. Bruce Habel said that a 750-gallon tank, which would be pumped to a new leach field, would be added. The new leach field would be placed on a separate property for which the applicant had received an easement; use of the existing leach field would be discontinued. The CEO said the septic system came under the jurisdiction of the DEP and the Plumbing Inspector and had no bearing on the PB review.

Mr. Cobey said the application could not be reviewed without the shoreline zone lines being shown. In response to a question, Mr. Habel said both the house and the addition would be more than 75' from the water. He clarified for Mr. Muddle that there was an existing house, garage and cottage; the proposed addition would be to the cottage. The CEO said the Board wanted to see the 75' setback shown on the plan. Mr. Remian said no action would be taken until that information was shown.

6. Gil and Sue Harper, Represented by Omni Construction, Application for Land Use Permit for Addition to Home and New Swimming Pool in Shoreland Zone, Limited Res. Zone, Map 4, Lot 15: The CEO said that a septic permit had been issued for this property. Gil Harper said he would be placing a swimming pool in the current septic field location, relocating the septic field and putting a 21' X 28' addition on the house. Mr. Cobey said an erosion and sediment control plan would be needed. Mr. Bickford suggested that such a requirement might be a burden on applicants making minor changes. Mr. Cobey responded that it would be simple to indicate on a plan protection from runoff on the downhill side. Mr. Bickford said there were regulations, not included in the SZO that a CEO must follow. One of these was best management practice, which he had discussed with John Fry, who would be doing the construction on this application. The chairman asked if it would be acceptable to Mr. Cobey if the plan noted that best management practices would be followed. Mr. Ellis asked if the CEO would check to see that these practices were used and Mr. Bickford said he would. Mr. Cobey asked Mr. Fry if he would stipulate that the silt fence would be placed at the 75' line and the contractor agreed. There was further discussion of the details of sediment control procedures.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to accept the application on condition that the CEO received a sediment control plan that satisfied Section P of the SZO.
Carried 5-0-0

The Board then considered the land use standards.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(A) did not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(B) was satisfied.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, that Section 15(C, D, E, F, G and H)) did not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(I) was satisfied.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that Section 15(J, K, L, M and N) did not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, that 15(O) did not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section P was satisfied, conditional on the CEO receiving an erosion sediment control plan that satisfied the requirements of this section.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(Q, R, S and T) did not apply to this application.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on Section 16(3)(A-I) based on the information heard and presented tonight that these provisions were adequate.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Cobey, that, based on the proper finding of facts in Section 16(E)(3), the application be approved.
Carried 5-0-0

7. Continuation of Robbins Mountain Subdivision Application, Map 5, Lot 84: Chairman Remian said he had spoken with Becky Maddox at the DEP today. Ms. Maddox had been unable to provide dates by which the Board's questions could be answered or Mr. Tower's application acted upon. Ms. Maddox had said Mr. Tower owed the DEP some buffer information. Mr. Tower said he had received additional information on the test pits from Doug Meservey on Monday and he would send this to Ms. Maddox. Mr. Tower said the DEP could answer the Board's question without any more information from him. Mr. Remian said Ms. Maddox had told him that the buffering information from Mr. Tower might satisfy the storm water aspects of the PB's questions.

Mr. Tower said he understood the Board to be saying that two assumptions had been made. The first, for the storm water plan, was that the developed area would be 1/3 of an acre on each lot and the remainder of each lot would not be converted to lawns or impervious areas. The developer said he agreed with this. He said he was calling for herbaceous vegetation of a height that would not impede views. Mr. Tower said it was the DEP's position that cutting trees without removing the stumps did not constitute development. The developer said new vegetation would rapidly develop as a result of the sun no longer being blocked by tree cover. For the visual assessment, he said, a different assumption was made. That assumption was that the site would be clear-cut (the worst case scenario) and even then it had been concluded that there was no adverse visual impact on the protected resource, the St. George River. Mr. Tower reiterated that most of the site would remain tree-covered, though with different species offering a lower profile. Mr. Cobey asked if the resurgence of forest after clear-cutting that Mr. Tower predicted would be in competition with the areas of shorter species. Mr. Tower replied that he would let things grow naturally until the lots were sold, at which time the owners could do as they liked as long as it did not ruin the view of lots above or behind. If they planted taller trees they would need to remove the tops if they impeded the view.

Mr. Muddle said the Board had gone over this many times since it was presented a year ago. He asked what the point was, since tree cutting did not disturb the soil and met the runoff requirements. Mr. Remian responded that he was not happy with the runoff requirements and Mr. Muddle asked why. Mr. Remian said the PB did not know what would happen on that lot and several people had stated concerns about runoff, as had the DEP. Mr. Tower asked the chairman to read from the Subdivision Regulations [SR] a precise statement addressing his concerns. Mr. Remian read aloud Section 9.6 "Surface Drainage". Mr. Tower said he had provided what was required therein and some credible evidence must be given to support concerns stated at a Public Hearing. Mr. Remian said that Mr. Fitzgerald of the DOT had said the developer was responsible for clearing anything outside his development that abutted their roadway, providing ditching and proper drainage for them to maintain. Mr. Tower said he would be

delighted to do that if the DOT provided a ROW for the purpose, which would be very unusual. Mr. Remian said he would provide Mr. Tower with contact names tomorrow.

Mr. Cobey said the Board was still discussing this because nothing in the covenants prevented anyone from covering his entire lot with lawn, thus creating more runoff. Mr. Muddle said lawn was a pervious surface and the covenants were not within the PB's purview, but Mr. Cobey stated that it changed things enough that a different drainage plan would be needed. Mr. Muddle said he thought the PB could not tell a property owner what he could plant on his lot. Furthermore, since the Board had seen the drainage plan and the DEP was looking at it, he asked why the Board must keep revisiting it. Mr. Muddle noted that Mr. Tower had said repeatedly that runoff would be less after development than before.

Mr. Tower stated that he had prepared the storm water management plan according to state rules and said the DEP was not expressing concerns about it. He asked where that plan specifically failed to meet the Board's standards. If it did fail to meet their standards, he said, they were required to tell him why in writing. Mr. Cobey said the Board would accept the DEP's approval. Mr. Ellis said this was contested by the Board's request to DEP for an answer to its contention that the application was not consistent with what Mr. Remian and Mr. Cobey thought was required for runoff, based on how much land was cleared. Mr. Ellis said he did not require that answer because he thought DEP's requirements would satisfy him. Mr. Ellis said the holdup was not waiting for DEP approval, but waiting for an answer to that question.

Mrs. Kalloch asked what other issues were unresolved. Mr. Cobey said the road and fire pond needed to be noted as common areas. Mr. Remian said he was still waiting for information on plumes and Mr. Tower said the town had no standard on plumes. Mr. Remian said he would also like to see the case law examples that Mr. Tower had promised.

Mr. Tower said he would like to have his letter to the PB, dated today, become part of the record. He read from the last page, paragraphs 2 and 3. He said that Dr. Garrett's contention therein negated the points made by Mr. Katsiaficas' letter. Mr. Ellis agreed and said he saw nothing in Mr. Katsiaficas' letters that conflicted with the Board's finding that the groundwater was acceptable. Mr. Muddle asked if the Board would table the application pending arrival of DEP approval. Mr. Tower said he would be agreeable to that.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to table this application, pending DEP site law approval, as agreed to by the applicant.
Carried 5-0-0

8. Last Resort Holdings, LLC, Continuation of Land Use Permit for Map 5, Lots 85 & 86, in Shoreland Zone:

The chairman asked Mr. Tower if a copy of a wetlands expert's report had been included as part of this application. Mr. Tower said the report had already been presented to the Board. Mr. Remian said he didn't feel all the wetlands were depicted and felt the wetlands report should be part of the package. Mr. Tower said the report was part of the DEP application and would not be definitive in discussing where the wetlands' lines were located. Mr. Muddle said the 6/19 letter from the Army Corps approved the change in the parking area and showed the wetlands. Mr. Remian said there was also an issue with the DEP ruling based on the changes to the shoreland law. The developer said he had provided copies of an IF&W memorandum that allowed this activity. Bird habitat requirements were discussed. Mr. Tower said that within the town permitting process he had separated this lot from the subdivision, but had not separated it within the DEP's process because it had different rules. The DEP had elicited a response by memo from IF&W and the Board had a copy of that, Mr. Tower said. Mr. Cobey then read aloud some of this memo.

Mr. Cobey learned from the chairman that the deeds requested had not been received. Mr. Cobey said that an erosion control plan was also needed, but Mr. Tower said it was stipulated in the application that he would follow best management practices, which should satisfy the Board. Mrs. Kalloch asked how the Board would deal with the bird habitats in relation to the building of the deck and ramp. Mr. Cobey replied that Mr. Tower had a state permit that allowed him to do what was on the plan, though he also needed a Cushing permit. Mr. Tower corrected him, saying he had a federal (Army Corps) permit. Mr. Cobey said that Title 38, Section 1801, said local agencies with responsibilities for regulating coastal resources should conduct their activities consistent with certain policies. Mr. Ellis said that fell into alignment with Cushing's regulations; namely, to have no adverse impact.

Mr. Cobey then read aloud Section 15(G)(2) and asked what the PB thought of its impact on this application. Mr. Muddle and Mr. Ellis said what Mr. Cobey had read was the answer to his own question; namely, that it was an allowed use. Mr. Muddle asked what concerned the PB. He said the shorebird wading and feeding areas involved

with the 100' setback would have minimal impact because it was such a tidal area. He stated that if runoff was an impact concern, the Board should review it. Mr. Remian said he was not satisfied that the PB had received the wetlands information it had requested. He said the application was not complete and the Board should not have to refer to the Robbins Mountain Subdivision [RMS] application for information. Mr. Tower suggested tabling the application and said he would put together a complete application that did not refer to RMS. Mr. Ellis suggested the Board be clear about what it wanted to see. Mr. Tower said the application form was deceptively simplistic compared to the amount of information the PB expected to see and he would work on fixing it. Mr. Remian also asked that the developer define the amount of fill that would be used.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Cobey, to table based on the applicant's agreement to table.
Carried 5-0-0

9. Cushing Holdings, LLC, Pre-Application for Meduncook Plantation Subdivision, Amendment to Plan, Map 6 (portion): Mr. Tower said this was an incredibly simple request, which did not warrant the full multi-step procedure. Mr. Remian stated that review would be based on the 5/19 regulations.

Mr. Ellis said the applicant had requested a waiver for all other submission requirements, which Mr. Ellis also thought was appropriate. Mrs. Kalloch said a couple of the changes impacted people already owning lots. Mr. Cobey asked if the owners' permission would be required to make the changes. Mr. Tower said they had all been notified and this was actually being done at their request. Mrs. Kalloch and Mr. Cobey said they had some problems with taking that on faith.

Mr. Muddle asked Mr. Tower to explain why he was requesting these changes. Mr. Tower replied that the lot line between Lots 3 & 4 had been straight; however, the house had been laid out so it was almost on the property line, necessitating the deeding of part of Lot 3 to Lot 4 to provide the 25' buffer. On Lots 20 & 21 the orientation of the garage doors required that the driveway be located in the buffer line. The owner of Lot 21 would now sell 25' of his property to the owner of Lot 20 to correct this. In addition, the depiction of the old road had been removed from the plan and Lots 10 & 26, previously approved, had been added. Mr. Cobey noted that Lot 10 had been reduced in size from 2.72 acres to 2.64 acres. Mr. Tower seemed unaware of this and said he would check that, as well as other line changes Mr. Remian had noted. Mr. Cobey said the Board should have some evidence that owners were aware of the fact that their lots had been reduced in size. Mr. Tower said he had certified letters to offer as proof, though no proof was needed for Lot 10 because it had not been sold. Mr. Bickford said he understood that the Board was asking that any lot owner (other than Mr. Tower) whose lot was reduced provide written approval. Mr. Tower said he had proof of certified mailings to these lot owners.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to waive the pre-application requirement due to the simple nature of the amendments.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, to waive all other submission requirements.
Carried 5-0-0

10. Adjournment:

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to adjourn at 8:56 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary